IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

CRP.No. 829 of 2007()

IA 2223/05 in OS.148/2001 of MUNSIFF COURT, KARUNAGAPPALLY

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REVN. PETITIONER: RESPONDENT

ABDUL AZEEZ KUNJU.K.,
KIZHAKKEVEETTIL, PAVUMBA THEKKUM MURI,
PAVUMBA VILLAGE.

BY ADV. SRI.T.M.SUNIL
SMT.S.CHITHRA
SRI.A.S.BRIJESH

RESPONDENT: PETITIONER

NANU PARAMESWARAN,
ARUVILAYIL VADAKKATHIL,
PAVUMBA THEKKUM MURI,
PAVUMBA VILLAGE.

BY ADV. SRI.BRIJESH MOHAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON IA 2268/07 IN CRP 829/07

DISMISSED.

SD/- M.N.KRISHNAN, JUDGE.

28/11/2007

M.N.Krishnan, J.

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C.R.P.No.829 of 2007

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Dated this the 28th day of November, 2007.

ORDER

This Civil Revision Petition is preferred against the order of the Munsiff, Karunagapally whereby he had set aside the ex parte order under Order 9 Rule 13 of C.P.C. on payment of cost of Rs.1,500/-. It is the case of the respondent herein that he was undergoing treatment for Rheumatism under RW2 and he had issued Ext.P1 medical certificate recommending rest for 15 days with effect from 1.11.2005 to 15.11.2005. The Doctor also deposed before the court that he has given advice to the patient. The said Doctor has proved Ext.A1 certificate. But the revision petitioner herein would contend that the case put forward by the defendant in the suit is not correct for the reason that he was working as a boatman and he had submitted a bill on 5.12.2005 for the salary of November, 2005 and that there is nothing to show that he was absent from attending the work on 7.11.2005. When confronted with such a situation, the defendant would

submit that he has made alternate arrangements, so that the work would not suffer. It is true that it is a point which is slightly against the defendant. But the principle to be followed has been laid down by this Court in **Sreedhara Kurup** v. **Mickel** - 1968 K.L.T. 599. This Court held thus:

> "It is largely a matter of wise discretion to be exercised by the court bearing in mind the wholesome principle that the right of a party to be heard should be negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs. The brooding spirit of natural justice must be in the background while ascertaining whether there is sufficient cause."

2. Here the application for setting aside the ex parte decree has been filed in time. The defendant has examined himself and also examined the Doctor who had issued Ext.A1. It is true that the plaintiff in the suit is able to create some suspicion with regard to the ailment of the person. But as held in the decision

referred to by me above, there has been a move in the right direction to get the decree set aside and the principles of natural justice always require to have the matter heard and disposed of on merits.

3. Therefore, I do not find any arbitrariness, illegality or perversity in the exercise of the judicial discretion vested in the court below and hence, I confirm the said finding and dismiss the Civil Revision Petition.

M.N.Krishnan,
Judge.

ess 29/11